

Accountability in the Face of Progress

Contracting

Processing Contracts

- Regulatory Requirements
 - Contracts 250.30(c)
 - Subcontract
 - End Products
- ACDA Prototype Contract & EPDS

Definition of Processor

“Processor means any commercial facility which processes or repackages donated food.”



Processing means:

- (a) The conversion of a donated food or donated foods into a different end product
- (b) The repackaging of a donated food or donated foods.

Typical Arrangements

Standard Arrangement

- Processor has agreement w/ State to use DF as an ingredient in end products sold to eligible recipients
- RA pays for processing

Subcontract Arrangement

- Primary processor subcontract out some portion of the manufacturing process
- Processor pays subcontractor fees
- RA purchases end products

Responsibilities

Processor

- Contract w/ State
 - Subcontract
- Approved EPDS
 - Subcontract EPDS
- Purchasing agreement
- DF draw down & VPT
- MPR to State

Recipient

- Purchasing agreement
- Ship DF to processor or subcontractor

NDM Contracting

Still two basic arrangements

Standard

- Processor is cheese manufacturer
- Uses NDM to make cheese
- RA purchases cheese
- Usually Fee-for-Service
- Example: Shred Cheese
- 20% of contracts

Subcontract

- Processor subcontracts for NDM conversion into cheese for end products
- RA purchases end products from processor
- $\text{NDM Value} \times \text{Col. 9}$
- Example: Pizza
- 80% of contracts

Cheese from NDM is NOT Commodity Cheese

Standard Twist

- State/RA contracts cheese production
- Pays Fee-for-Service
- Product destination is another processor
- Contracts w/ another processor for desired end products
- Can not sell cheese because it contains commodities
- Negotiates value of cheese, VPT, & accountability
- Recommend ACDA agreement as prototype

Definition of Processor

Processor means any commercial facility which processes or repackages donated foods.

However, commercial enterprises which handle, prepare and/ or serve products or meals containing donated foods on-site solely for the individual recipient agency under contract are exempt under this definition.

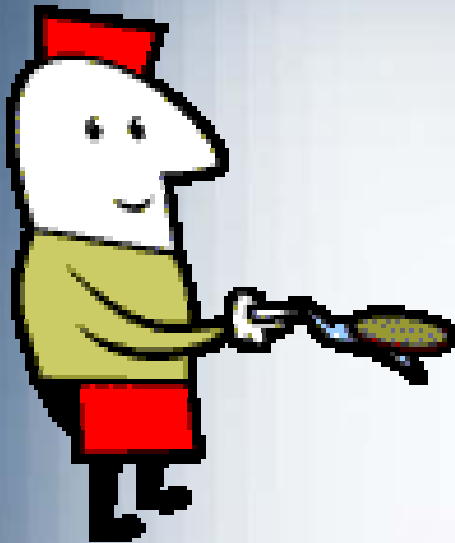
Not applicable to RA's if accountable for DF and any funds received accrue to food service account.

Other Entities

- Brokers
- Subcontractors
- Co-packers
- FSMC's



FSMC as Processor



- Exempt prior to 1993
- Prepare products or meals containing donated food for more than one RA under more than one contract in the same facility
- Meals for any one RA off-site
- Not applicable to RAs

OIG Audit



- Rpt #27601-0027-CH
- April 2002
- Finding 1
 - Fixed-Rate-Per-Meal Contracts
 - FSMC profited by withholding the value of donated commodities
- Recommendation
 - Bid w/o commodity
 - Require full value credit or reduction

Current Regulations

7CFR 250.12(d)

...any donated foods received by a RA and made available to a FSMC shall be:

- 1) Utilized solely for the purpose of providing benefits for the RA's food service operation, and
- 2) The RA's responsibility to demonstrate that the full value of all donated food is used solely for the benefit of the RA.

Method of VPT for FSMC

Only “recommended” by current guidance

Fixed Price

Contract should specify that credits or reductions will be indicated on invoices to SFA

Cost-Reimbursable

Value of commodity should be itemized on billing statements to document savings realized from commodity usage

Challenges

- Are FSMC Processors?
- Crediting
 - Value of entitlement commodity
 - Bonus commodity
- Single Inventory
 - “Used” vs. “Received”
- Processing
- Substitution
- Food Ordering
- Monitoring